IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 389 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KESHUBHAI BHIMABHAI KESHVALA

Versus

SHAMJIBHAI MANJIBHAI TILVA

Appearance:

MR RC KAKKAD for Appellant

MR VG DAVE for MR YOGESH S LAKHANI for Respondents No. 1-4

RULE SERVED for Respondents No. 5-8

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 10/01/2002

ORAL JUDGEMENT

1. Heard Mr.R.C.Kakkad, learned advocate for the appellant and Mr.V.G.Dave, learned advocate for Mr.Y.S.Lakhani, learned advocate for the respondents No.1 to 4. The respondents No.5 to 8 are absent though duly served.

2. The learned advocates for both the parties jointly submit that this appeal be disposed of by giving suitable directions to the trial Court. Mr.R.C.Kakkad, learned advocate for the appellant submits that the appellant i.e. defendant No.5 be given liberty to submit an application under Order-39, Rule-4 of Civil Procedure Code, afresh. Permission as prayed for is granted.

3. The present appellant i.e. defendant No.5 is permitted to file an application under Order 39, Rule-4 Civil Procedure Code afresh within 15 days from the date of receipt of writ of this order by the trial Court and on such application being filed the learned Judge of the trial Court shall decide and dispose of that application, strictly on merits, in accordance with law within one month from the date of filing of such application. The learned Judge of the trial Court shall give full opportunity of being heard to all the parties in the suit and shall decide that application, which may be filed by the defendant No.5 pursuant to this order without being influenced in any way by the order of this Court.

4. In view of the aforesaid directions, this appeal stands disposed of. No order as to costs. The order dated 24/9/2001 passed by this Court (Coram : B.J.Shethna,J.) in Civil Application No.10500 of 2001 shall stand vacated forthwith.

(H.H.Mehta,J.)

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